

9/21/2011

ADM File No 2010-13

With regard to the above referenced proposed rule change, please note that as an attorney who has been in practice since 1995 and whose sole area of practice is criminal defense, if the proposed change is adopted, I will feel compelled by my ethical obligation to my client to advise against EVER waiving a preliminary exam.

The purpose of a preliminary exam is to establish probable cause. Many, if not most, times, the discovery will reveal that the preliminary exam is not necessary. Without discovery, I will not be able to advise my client properly. I would risk allowing my client to be bound over on insufficient evidence or inadmissible evidence if I were to advise waiving in the absence of discovery.

I'm afraid this rule will create a tremendous increase in the number of preliminary exams. What is the benefit gained by failing to provide discovery before the exam? Discovery still must be provided eventually.

Please reconsider this change. It will be a detriment to the system.

Sincerely,

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Sent from my iPad